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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,269	12/14/2001	William M. Mitchell	50150/025002	9901

21559 7590 01/28/2004

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

EXAMINER

SWARTZ, RODNEY P

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/020,269	Applicant(s) MITCHELL ET AL.	
	Examiner Rodney P. Swartz, Ph.D.	Art Unit 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspond nc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24October2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) 3-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-5 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

1. Applicants' Response to Restriction, received 24 October 2003, is acknowledged.
Applicants elect, without traverse, Invention I, claims 1 and 2, drawn to polypeptide, classified in class 424, subclass 263.1. Claims 3-5 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.
2. Claims 1 and 2 are under consideration.

Priority Statement

3. The status of all applications in the priority statement need to be updated, i.e., 09/025,596 is now U.S. Pat. No. 6,340,463.

Reference Incorporation

4. Applicant is directed to MPEP §608.01(p) for procedures in the event that the instant application is allowed. The following is a recitation of the pertinent paragraph:

Prior to allowance of an application that incorporates essential material by reference to a pending U.S. application, the examiner shall determine if the referenced application has issued as a patent. If the referenced application has issued as a patent, the examiner shall enter the U.S. Patent No. of the referenced application in the specification of the referencing application (see MPEP §1302.04). If the referenced application has not issued as a patent, applicant will be required to amend the disclosure of the referencing application to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating the amendatory material consists of the same material incorporated by reference in the referencing application.

Throughout the instant application, various other U.S. applications, as well as a reference only designated by attorney docket (page 19, line 8) are instructed by applicants to be "incorporated herein by reference". If the instant application is allowed, then applicants are required to comply with MPEP §608.01(p).

Specification

5. The disclosure is objected to because of the following informalities:

Page 2, line 27, "embodiemnts" should be "embodiments",

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Page 3, line 24, "seuquence" should be "sequence"

Page 4, line 21, "th" should be "the",

Page 8, line 27, "circumstance" should be "circumstances",

Page 15, line 20, "antiobdies" should be "antibodies"

Page 17, line 27, "innoculated" should be "inoculated",

Page 19, line 7, "spceifically" should be "specifically",

Page 23, line 4, "emino" should be "amino",

Page 24, line 1, "pneumonia" should be "pneumoniae",

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Storey et al (*J. Gen. Microbiol.*, 139:2621-2626, 1993).

The claims are drawn to a substantially pure immunogenic polypeptide having a subsequence of SEQ ID NO:81 that comprises amino acids 2-13 of SEQ ID NO:101.

Storey et al teach the claimed polypeptide (Figure 1, residues 342-354).

8. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Girjes et al (*Gene*, 138:139-142, 1993).

The claims are drawn to a substantially pure immunogenic polypeptide having a subsequence of SEQ ID NO:81 that comprises amino acids 2-13 of SEQ ID NO:101.

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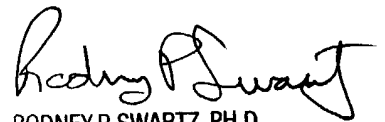
Girjes et al teach the claimed polypeptide (Figure 1, residues 342-354).

Conclusion

9. No claims are allowed.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., whose telephone number is (703) 308-4244. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (703)308-3909. The facsimile telephone number for the Art Unit Group is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703)308-2035.



RODNEY P. SWARTZ, PH.D.
PRIMARY EXAMINER
Art Unit 1645

January 26, 2004